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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SANDRA S. YBARRA,) Case No.: 08cv0350 JAH(RBB)
Plaintiff,)
v.)
UNITED STATES OF AMERICA;)
ANHEUSER-BUSCH, INC. D/B/A)
ANHEUSER-BUSCH SALES OF SAN)
DIEGO, and DOES 1 through 20,)
Inclusive,)
Defendants.)
)
**DECLARATION OF AUBREY D. BOYD
IN OPPOSITION TO *EX PARTE*
APPLICATION FOR ORDER EXTENDING
TIME OF EXPERT DESIGNATIONS AND
RELATED DISCOVERY**
Date: TBA
Time: TBA
Judge: Magistrate Ruben B. Brooks

I, AUBREY D. BOYD, hereby declare:

1. I am an attorney duly licensed to practice law in the State of California and in the Federal District Court for the Southern District of California. I am an attorney of record for the plaintiff SANDRA S. YBARRA. I have personal knowledge of the facts set forth herein, and if called upon to testify, could competently do so.

2. Although counsel for the plaintiff has discussed the liability facts and issues with defense counsel for ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH SALES OF SAN DIEGO on several occasions, and although, based on the documentary evidence and opinion of plaintiff's liability expert (which has been timely exchanged), liability appears to be clear, counsel for ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH SALES OF SAN DIEGO has doggedly

1 refused to concede the issue or to even discuss settlement of the case on any reasonable basis.

2 3. In view of the foregoing, plaintiff's counsel has had no alternative but to engage in
3 extremely time consuming, costly and what we believe should be unnecessary discovery on the issue
4 of liability. It is the plaintiff **NOT** the defendant who has already taken the deposition of one
5 liability witness (defendant's merchandiser), and who has set the deposition of four (4) additional
6 liability witnesses in this case. It is also the plaintiff **NOT** the defendant who has scheduled a site
7 inspection in this case.

8 4. In spite of the fact that defendant ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-
9 BUSCH SALES OF SAN DIEGO has conducted **NO** liability discovery in the case, their counsel
10 now claims the aforementioned discovery is somehow essential in order for their expert to prepare
11 his/her report in this matter and for them to meet their designation deadline for experts, which was
12 set at the CMC on June 6, 2008, with their agreement. They also want additional time to conduct
13 a medical examination of the plaintiff.

14 5. Pushing the dates back as suggested by the defendant will place the discovery cut-off date
15 to the Friday before I am scheduled to begin trial on another case (November 10th), i.e., I will be
16 heavily involved in trial preparation.

17 6. We believe the net effect of granting the defendant's requests will be to reward their lack
18 of diligence in this case. It will also unfairly give the defendant additional time for their experts to
19 prepare their opinions and respond to plaintiff's expert reports, i.e., the defendant's experts will have
20 the added benefit of being able to consider the results of plaintiff's pending discovery. On the other
21 hand, Plaintiff has had to meet her disclosure deadline prior to completion of that same discovery.

22 7. It should also be noted that plaintiffs' counsel has sought defendant ANHEUSER-
23 BUSCH, INC. D/B/A ANHEUSER-BUSCH SALES OF SAN DIEGO's counsel's cooperation on
24 a number of issues in this case including responses to an amended set of interrogatories propounded
25 to said defendant by plaintiff, which were inadvertently misnumbered - counsel for the government
26 on the other hand fully cooperated in resolving that problem relative to a similar set of
27 interrogatories; the wording of defendant ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH
28 SALES OF SAN DIEGO's request for a protective order/stipulation as a prerequisite for their release

of liability documents which had not been identified/produced in response to plaintiff's request for production, but which were identified for the first time when plaintiff took the deposition of defendant's merchandiser; and reasonable conditions for a stipulation for the defendant's request for a medical examination.

8. In any event, plaintiff believes the matters which are the subject of defendant ANHEUSER-BUSCH, INC. D/B/A ANHEUSER-BUSCH SALES OF SAN DIEGO's *ex parte* application are of their own making, and are not, therefore, a proper matter for consideration by way of ex parte application. *Mission Power Engineering Company v. Continental Casualty Company* 883 F.Supp. 488 (C.D. Cal. 1995).

I declare under penalty of perjury, pursuant to the laws of the State of California that the foregoing is true and correct. Executed this 29th day of August 2008, at San Diego, California.

s/s Aubrey D. Boyd _____
AUBREY D. BOYD

Ex Parte - Decl.ADB

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 and am not a party to the within action; my business address is: 12702 Via Cortina, Suite 105, Del Mar, CA 92014.

I filed the foregoing documents electronically via CM/ECF in the above entitled court described as:

DECLARATION OF AUBREY D. BOYD IN OPPOSITION TO EX PARTE APPLICATION FOR ORDER EXTENDING TIME OF EXPERT DESIGNATIONS AND RELATED DISCOVERY

The following are those who are currently on the list to receive e-mail notices for this case:

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I certify under penalty of perjury under the laws of the State of California and the laws of the United States that the foregoing is true and correct.

Dated: August 29, 2008 at Del Mar, California.

s.s Darren J. Quinn
Darren Quinn